

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Jared Fiege,

Case No. 23-cv-0602 (NEB/DLM)

Plaintiff,

v.

**REPORT AND
RECOMMENDATION**

MEnD Correctional Care, et al.,

Defendants.

This matter is before the Court on Plaintiff Jared Fiege's unsuccessful attempts to effect service on Defendants MEnD Correctional Care and Todd Leonard. These pretrial matters have been referred to the undersigned United States Magistrate Judge for a Report and Recommendation pursuant to 28 U.S.C. § 636 and District of Minnesota Local Rule 72.1. For the reasons below, the Court recommends that these two unserved Defendants be dismissed from this action without prejudice.

Plaintiff filed this action on March 13, 2023. (Doc. 1.) MEnD Correctional Care and Todd Leonard allegedly received notice of this lawsuit and a request for waiver sometime shortly after May 15, 2023, but no waivers were returned executed. (Docs. 23, 34.) On July 20, 2023, the Court issued an Order directing the U.S. Marshals Service to effect service on MEnD Correctional Care and Todd Leonard (Docs. 54, 55), but again the summonses were returned unexecuted because the U.S. Marshals Service could not locate these Defendants at the addresses provided by Plaintiff, (Doc. 56). On September 1, 2023, the Court issued an Order directing Plaintiff to submit new forms for the U.S. Marshals Service

to serve Defendants MEnD Correctional Care and Todd Leonard, which Plaintiff did. (Docs. 58, 59.) The U.S. Marshals Service again attempted to effect service but still did not succeed. (Doc. 63.) The U.S. Marshals Service's remarks on each of the forms states, "Party to be served no longer at address provided." (*Id.* at 1, 3, 4, 6, 7, 9, 10, 12.)

Under the Federal Rules of Civil Procedure governing this civil action, service is intended to be effected within the first 90 days of an action. Fed. R. Civ. P. 4(m). Because Defendants MEnD Correctional Care and Todd Leonard had not been served as required by Rules 4(c) and 4(m) of the Federal Rules of Civil Procedure, the Court issued an Order on October 12, 2023, requiring that Plaintiff show cause why the dismissal without prejudice of Defendants MEnD Correctional Care and Todd Leonard should not be recommended. (Doc. 64.) On November 2, 2023, the Court received a letter from Mr. Fiege explaining that he has no other address to provide for these Defendants, but that they "have a major role in [his] case and also impact the other parties in this case." (Doc. 66 at 1.) Thus, he asked that the Court not recommend dismissal of these Defendants, but instead allow him additional time to investigate the locations of these Defendants so that they can be served because "[his] resources are limited in the BOP." (*Id.* at 2.) On November 6, 2023, the Court granted Mr. Fiege a final extension of time to provide the Clerk's Office with new addresses to serve Defendants MEnD Correctional Care and Todd Leonard, which he did. (Docs. 67, 69.) Again, the U.S. Marshals Service attempted to effect service but once more was unsuccessful. (Doc. 72.)

While the Court is sympathetic to the challenges that Mr. Fiege is facing in serving these Defendants, it cannot extend the time period for service indefinitely. Mr. Fiege has

presented no evidence that service is likely to be effected if the Court were to grant another extension. And as noted above, the Court has granted several extensions to the 90-day deadline to allow Mr. Fiege to investigate and attempt to serve these Defendants. Each time service has been attempted, it has been unsuccessful. The Court cannot, regrettably, recommend that additional time be granted.

RECOMMENDATION

Accordingly, based on the all the files, records, and proceedings above, **IT IS RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** as to Defendants MEnD Correctional Care and Todd Leonard for Plaintiff Jared Fiege's failure to effect timely service on them under Federal Rule of Civil Procedure 4(m).

DATED: December 8, 2023

s/Douglas L. Micko
DOUGLAS L. MICKO
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals. Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed findings and recommendations within 14 days after being served with a copy" of the Report and Recommendation.

A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).